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March 6, 1995

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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: RM-8577
(Petition for Rulemaking of the Cellular
Telecommunications Industry Association)

Dear Mr. Caton:

Transmitted herewith for filing with the Commission are an original and four copies of the "Reply Comments of Bell Atlantic Mobile Systems, Inc." in the above-captioned proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 6 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's Rules
To Preempt State and Local Regulation
of Tower Siting for Commercial
Mobile Service Providers

RM - 8577

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF BELL ATLANTIC MOBILE SYSTEMS, INC.

Bell Atlantic Mobile Systems, Inc. (Bell Atlantic Mobile),^{1/} by its attorneys and pursuant to Section 1.405 of the Commission's Rules, submits these reply comments in support of the Petition for Rulemaking of the Cellular Telecommunications Industry Association (CTIA). The CTIA requests that the Commission issue a Notice of Proposed Rulemaking to adopt rules preempting state and local regulations which bar or impede commercial mobile radio service (CMRS) providers from constructing new antenna towers.

The comments on CTIA's petition establish two important facts. First, CMRS carriers need access to numerous new antenna sites if they are to provide comprehensive, high-quality service to the public. Cellular, PCS and other CMRS technologies require

^{1/}

Bell Atlantic Mobile, either directly or through subsidiaries, partnerships or affiliates, holds authorizations from the Commission to operate cellular radiotelephone systems in more than 80 markets in the Northeast, Mid-Atlantic, Southeast and Southwest regions of the United States.

multiple sites within communities to supply the ubiquitous service that customers want and that CMRS providers are federally licensed to provide.^{2/} Second, certain localities are prohibiting the construction of new sites, or are imposing unreasonable and discriminatory moratoriums, restrictions and fees, that have the practical effect of barring new sites. The record contains numerous specific examples which document that these practices are unjustifiably delaying or preventing the provision of CMRS service to the public.^{3/} These two facts establish that a serious problem exists which warrants Commission intervention.

Bell Atlantic Mobile is cognizant of the legitimate right of state and local governments to control land use in their states and communities. For this reason it does not support complete preemption of local control over CMRS tower siting. At the same time, however, the record shows that some localities are barring new CMRS antenna towers altogether, are imposing restrictions or waiting periods on CMRS towers which have not been imposed on other types of antennas, or are assessing fees not charged other similar sites. It is this type of unreasonable and discriminatory interference with federally-licensed communications services that not only justifies but compels federal preemption.^{4/}

^{2/} E.g., Comments of McCaw Cellular Communications, Inc. at 3-4; Cox Enterprises, Inc. at 3; GTE Mobile Communications at 3-6.

^{3/} E.g., Comments of Electromagnetic Energy Alliance, Attachment 1; American Personal Communications at 2-5; McCaw Cellular Communications, Inc. at 11-19; NYNEX Mobile Communications at 5-7; Southwestern Bell Mobile Systems at 10-15; United States Cellular Corp. at 3-9; Vanguard Cellular Systems at 2-5.

^{4/} The Commission has the power, when "acting within the scope of its congressionally delegated authority," to preempt

The Commission has previously intervened in a closely comparable situation where local regulations were interfering with the public's access to communications services. In 1986, it adopted Section 25.104 of its Rules, which generally preempts local zoning rules for satellite earth stations that differentiate between this type of antenna and other types of antennas.^{5/} The Commission felt compelled to act because certain communities were imposing complete bans or discriminatory restrictions on installation of earth stations. The Commission's action was narrowly tailored to meet the specific problem and to balance competing federal and local interests. The comments in response to CTIA's petition establish that the obstacles to CMRS tower siting are every bit as widespread and serious as that which led the Commission to act with regard to earth stations.

conflicting state or local regulation which "stands as an obstacle to the accomplishment and execution of the full objectives of Congress." Louisiana Public Service Comm'n v. FCC, 476 U.S. 355, 368-69 (1986). There can be no question that regulation of radio antenna facilities is within the Commission's jurisdiction under Title III of the Communications Act of 1934, nor that unreasonable and discriminatory local restrictions on antennas can impair Congress' objectives in Section 332 of that Act.

5/ Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations, 59 RR 2d 1073 (1986). The comments opposing CTIA's petition are based on the objection that zoning is a local matter. This objection was also made against preemption of local regulation of earth stations. But the Commission, citing Supreme Court caselaw, disagreed: "It cannot be argued that preemption is automatically precluded merely because zoning has been called a traditionally local matter." 59 RR 2d at 1080. It held that preempting only unreasonable and discriminatory zoning rules properly balanced local interests with the need to ensure access to communications services. That same analysis applies to CMRS towers and warrants limited preemption.

In short, the record fully supports further consideration by the Commission of the extent to which certain state or local regulation of CMRS tower siting should be preempted. Bell Atlantic Mobile urges the Commission to initiate a rulemaking on this important matter promptly.

Respectfully submitted,

BELL ATLANTIC MOBILE SYSTEMS, INC.

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Dated: March 6, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Reply Comments of Bell Atlantic Mobile Systems, Inc." were sent by first-class mail, postage prepaid, this 6th day of March, 1995, to each of the following:

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